

completed its installation of Covad's splitters²⁹³ by July 6, 2000, and VZ-MA only finished this work on October 10, 2000. Covad asserts that, despite VZ-MA's statements to the contrary, Covad's splitters were sitting in a New Jersey warehouse "awaiting the call" from VZ-MA with delivery instructions.²⁹⁴ In addition, Covad contends that VZ-MA received Covad's splitters in early July; therefore, VZ-MA's installation work should have been completed long before mid-October. Finally, Covad disagrees with the Department's finding that Covad was late in providing splitters to VZ-MA and that it is "unaware of where in the 'record' . . . the Department finds support for [VZ-MA's] excuse."²⁹⁵

Notably absent from Covad's comments about VZ-MA's installation delays is the date on which Covad notified VZ-MA that splitters for Massachusetts central offices were ready for delivery.²⁹⁶ In another Department proceeding, D.T.E. 98-57-Phase III, Covad acknowledged that it did not even order the splitters for Massachusetts until "late May" and that the splitters were not shipped to the New Jersey warehouse until June; though, again, Covad fails to

²⁹³ Covad has selected VZ-MA's Option C line sharing arrangement, where splitters for Covad's use are placed in VZ-MA's central office space and are maintained by VZ-MA. Id. at 29.

²⁹⁴ Id. at 29-30.

²⁹⁵ Id. at 53.

²⁹⁶ See id. at 29 ("At the outset, Covad had all of the splitters necessary for Massachusetts stored in a New Jersey warehouse awaiting the call from [VZ-MA]") (emphasis added).

provide an exact date.²⁹⁷ Covad further states that its splitter vendor had a shortage of splitters because “every non-ILEC carrier in the country that sought to provide line sharing by June 6, 2000 was ordering splitters at the same time and mostly from the same vendor (Siecor),” and “Covad cannot say that . . . either the splitter shortage or the time line that it experienced in May and June is representative of the typical ordering process. As Siecor increases production and splitters from different vendors become [Network Equipment and Building Specifications] compliant, the amount of time that it takes to order and receive splitters should decrease dramatically.”²⁹⁸ In response to questioning by the Department, Covad testified that it required “a couple of weeks to get the splitter [Covad ordered] for the initial Bell Atlantic [line sharing installations].”²⁹⁹ On the basis of these statements from Covad, it appears that Covad did not have splitters available for Massachusetts until mid-June.³⁰⁰

In its comments, Covad does not dispute VZ-MA’s statement that, by agreement,

²⁹⁷ Appdx. B (D.T.E. 98-57-Phase III Covad Response to Record Request 7).

²⁹⁸ Id.

²⁹⁹ VZ-MA Application, Appdx. E, Vol. 24, Tab 406, at 406-407 (Transcript of D.T.E. 98-57-Phase III Evidentiary Hearing Held on 8/2/00). The Department is far from certain that Covad’s witness was discussing splitters for Massachusetts and not New York. In fact, it seems likely that Covad was referencing New York, where a line sharing trial began earlier this summer under the auspices of the NYPSC.

³⁰⁰ The mid-June figure may be overly-optimistic given Covad’s statements of splitter shortages and that the amount of time required to receive these Siecor splitters is not representative of the “typical ordering process.” Appdx. B (D.T.E. 98-57-Phase III Covad Response to Record Request 7).

Covad's splitters were to have been delivered to VZ-MA for installation on May 27, June 1, and June 8, 2000. Therefore, Covad all but admits to having missed three deadlines because it did not have the necessary equipment; deadlines that, if met, would have enabled it to provide line sharing in Massachusetts several months earlier. Finally, it is unclear to the Department why (even assuming arguendo that Covad's description of the relevant events is accurate) Covad was not more aggressive in establishing a splitter delivery date for Massachusetts rather than simply allowing its splitters to collect dust in a New Jersey warehouse while "awaiting the call" from VZ-MA.³⁰¹ If Covad had concerns about VZ-MA installation delays, it could have approached the Department to mediate between it and VZ-MA. Covad did not.

Covad also argues that, before it can offer line sharing in a state, all of the central offices in "that market" must be equipped with splitters. According to Covad, since its customers are Internet service providers that lack the ability to differentiate between end-users served out of central offices with and without splitters, Covad cannot offer line sharing until VZ-MA completes the installation of splitters in all requested Massachusetts central offices.³⁰² In addition, Covad argues that upon installation, it must still verify the accuracy of the carrier

³⁰¹ Though it is clear to the Department that, until July, Covad's splitters were not in Massachusetts, it is unclear where they were. Elsewhere in Covad's comments, it indicates that the splitters were sitting in its New York warehouse. Covad Comments at 53.

³⁰² Id. at 31-32.

facility assignment information provided by VZ-MA for each splitter.³⁰³

Covad did not raise the issue of being unable to offer line sharing until all of its requested central offices had been equipped with splitters before the Department (either in D.T.E. 99-271 or D.T.E. 98-57-Phase III). Thus, we are unable to comment upon this statement. However, Covad's argument that VZ-MA missed the FCC's June 6, 2000, deadline to make line sharing available because Covad was not offering line sharing by that date is undermined by the fact that, by its own actions, Covad had no intention of offering line sharing anywhere in Massachusetts until July 6, 2000, at the earliest.³⁰⁴

Finally, Covad mentions difficulties it has experienced in New York in placing line sharing orders for customers that receive dial-tone from resellers or UNE-P providers.³⁰⁵ Again, this issue was not presented before the Department in any proceeding; thus, we are unable to comment on the validity of Covad's assertion.

Rhythms argues that it has experienced recent problems with VZ-MA's central office

³⁰³ Id.

³⁰⁴ According to Covad, VZ-MA was to have completed the splitter installation work for Covad's requested central offices on June 15, June 29, and July 6, 2000. VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at 4366 (Transcript of Technical Session Held 8/17/00). Therefore, since Covad indicates in its filing with the FCC that it is unable to offer line sharing until all of its requested central offices are splitter-equipped, Covad did not intend to offer line sharing in Massachusetts until July 6, 2000, at the earliest. See also Covad Comments at 28.

³⁰⁵ Id. at 32.

wiring, asserting, for example, that the wiring was not done or was done incorrectly, or VZ-MA had failed to inventory the wiring or had inventoried the wiring incorrectly.³⁰⁶ In support of these claims, Rhythms cites five line sharing orders out of VZ-MA's Brighton, Massachusetts, central office.³⁰⁷ The line sharing events that Rhythms cites in both its comments and the Williams declaration occurred after our proceeding closed. Therefore, we have no record upon which to base an opinion about the validity of Rhythms' claims.³⁰⁸ Indeed, the Department is not privy to Rhythms' proprietary October 16, 2000, filing made with the FCC.

WorldCom argues that since VZ-MA provides virtually no evidence of its ability to provide line sharing with an unaffiliated data CLEC, and since KPMG did not test VZ-MA's line sharing capability, there is little assurance that VZ-MA can, in fact, provide this service today.³⁰⁹ According to WorldCom, VZ-MA fails to prove that it can or will accommodate line splitting, which allows a data CLEC and a voice CLEC to use the same loop to provide

³⁰⁶ Rhythms Comments, Williams Decl. at ¶¶ 38-39. Rhythms, unlike Covad, has selected VZ-MA's Option A line sharing arrangement, whereby Rhythms places the splitter in its collocation cage. According to Rhythms, VZ-MA must perform "pre-wiring" before Rhythms may offer line sharing out of VZ-MA's central offices. Rhythms Comments at 36 n.145.

³⁰⁷ Id. at ¶ 38.

³⁰⁸ The Department addresses Rhythms' OSS concerns in Sections II.B.1.d and e, above.

³⁰⁹ WorldCom Comments at 61-62.

simultaneous data and voice services, respectively.³¹⁰ WorldCom notes that the Department recently held that VZ-MA is not required to provide line sharing between two CLECs, but argues that this Department decision is a clear violation of FCC rules.³¹¹ Finally, WorldCom states that even if VZ-MA had been ordered to permit line splitting, VZ-MA has not demonstrated that it has the procedures in place to provide this combination of elements in a timely manner.³¹²

In previous § 271 Orders, the FCC has recognized that an ILEC should not be penalized for lack of CLEC demand in demonstrating its compliance with the 14-point checklist.³¹³ Specifically, based upon its interconnection agreements and its tariffed offering, the Department agrees with VZ-MA that line sharing is available in Massachusetts, and has been for months. VZ-MA should not be penalized for a lack of CLEC demand for line sharing. The Department expects that its Phase III Order, issued on September 29, 2000, will spur commercial volumes because that Order reduced or eliminated certain line sharing charges

³¹⁰ Id. at 62.

³¹¹ Id. at 62-63.

³¹² Id. at 64-65.

³¹³ See Bell Atlantic New York Order at ¶ 366 (“if no competitor is actually using a checklist item, a BOC must show that it has a concrete and specific legal obligation to furnish the item upon request and be ‘presently ready to furnish each item in quantities that competitors may reasonably demand and at an acceptable level of quality.’”) (citations omitted).

and modified or eliminated certain VZ-MA proposed terms and conditions. As mentioned in our Evaluation, the Department finalized its Master Test Plan for KPMG's test of VZ-MA's OSS the day the FCC adopted, but not released, its Line Sharing Order. That KPMG has not evaluated line sharing orders in Massachusetts is not an impediment to finding that a CLEC may obtain line sharing, in compliance with FCC and Department rules, today.

As WorldCom mentions in its comments, the Department expressly ruled that VZ-MA meets its "line splitting" obligations by permitting CLECs to engage in line splitting where the CLEC purchases the entire loop and provides its own splitter. In order for a competing UNE-P carrier to provision both voice and data service over the same loop, it can order the loop portion of the existing UNE-P as an unbundled, xDSL-capable loop terminated to a collocated splitter and DSLAM equipment along with unbundled switching combined with shared transport to replace its UNE-P.³¹⁴ The Department's decision was based upon our interpretation of applicable FCC rules and Orders.³¹⁵ We will not comment further upon WorldCom's line splitting claims because, on October 19, 2000, WorldCom filed a motion for reconsideration of our Phase III Order on this very issue. Thus, line splitting remains the subject of an open proceeding.

Like WorldCom, ALTS notes that KPMG did not test VZ-MA's ability to provision

³¹⁴ D.T.E. Evaluation, Appdx. E, at 39, citing SBC Texas Order at ¶ 325 (Phase III Order).

³¹⁵ Id. at 39-41.

line sharing, and contends that this failure to test VZ-MA's line sharing ability means that VZ-MA has not met its burden of proof with respect to checklist item 4.³¹⁶ The Department disagrees with ALTS premise that if KPMG does not test a particular type of order, VZ-MA cannot ipso facto have demonstrated that it is able to provision those orders (e.g., line sharing orders). An OSS test is just one mode of proof -- albeit an important one. It is inaccurate to state that VZ-MA has no line sharing experience. Since March 1999, VZ-MA has offered ADSL service to its retail customers, i.e., Infospeed, over shared lines.³¹⁷ In July, 2000, alone, VZ-MA provisioned almost 4,000 Infospeed orders to Massachusetts customers. Moreover, VZ-MA's performance with respect to its retail customers is improving even as the volume of orders increases.³¹⁸ In addition, line sharing is such a new requirement that it would be unreasonable to expect that an OSS test on the time-line of the test in Massachusetts would

³¹⁶ ALTS Comments at 41.

³¹⁷ The FCC noted ILECs' line sharing experience in its Line Sharing Order. See e.g., Line Sharing Order at ¶ 99 (finding that there are substantial operational similarities between the line sharing situation involving an ILEC and a CLEC).

³¹⁸ D.T.E. Evaluation, Appdx. E, at 51 (Phase III Order). VZ-MA's data show that in April, 2000, it required an average of 8.76 days to provision 2,423 Infospeed orders (not requiring a dispatch). By July, 2000, it provisioned 3,742 Infospeed orders in just 4.70 days, on average. To ensure parity of line sharing provisioning performance, the Department directed VZ-MA to provision CLEC line sharing orders at the shorter of five business days (initially) or the shortest average interval that VZ-MA has achieved by September 29, 2000. Id.

have included an evaluation of line sharing.³¹⁹

b. Conclusions

Several commenters argue that because KPMG did not test VZ-MA's line sharing ability, VZ-MA has not demonstrated that it can provision line sharing orders, thus warranting a finding of non-compliance with checklist item 4. We disagree. As noted above, the Department finalized its Master Test Plan for KPMG's test the day the FCC adopted its Line Sharing Order.

It is clear from at least one CLEC's testimony, Covad's, that it did not intend (nor was it prepared) to offer line sharing in Massachusetts by June 6, 2000. Recognizing that each CLEC operates under its own business plan and timetable, the Department does not criticize carriers for not seeking to provide line sharing in Massachusetts as quickly as permitted under FCC rules. However, it does not follow that simply because some CLECs chose not to offer line sharing by June 6, 2000, that VZ-MA has failed somehow to meet its line sharing obligations. Department-approved interconnection agreements that provide for line sharing were in effect by June 6, 2000, and VZ-MA had indicated that the rates, terms, and conditions in its proposed line sharing tariff, filed with the Department on May 5, 2000, would be made available to CLECs pending the conclusion of the Department's Phase III investigation.

³¹⁹ See SBC Texas Order at ¶ 321 (stating that, as with those parts of the UNE Remand Order's revised Rule 319 that were not in effect when SBC filed its § 271 application, it also would be unfair to require SBC to comply with the Line Sharing Order, where the implementation deadline of that Order was after SBC filed its application).

E. Checklist Item 5 - Unbundled Local Transport

1. Discussion

ALTS submitted a declaration from Digital Broadband containing allegations about VZ-MA's untimely provisioning of transport orders, frequently changed FOC dates, and failure to provision functioning interoffice facilities.³²⁰

2. Conclusions

Neither ALTS nor Digital Broadband raised transport issues during the Department's § 271 investigation, thus the Department has not had the opportunity to investigate Digital Broadband's claims or request that VZ-MA respond. Even assuming that the problems recounted in the Landers declaration occurred as described, the low number of transport complaints raised during our investigation suggests that transport provisioning problems, if any, are not systemic.

For the reasons discussed above and in our Evaluation, the Department recommends that the FCC accord little weight to transport comments filed by ALTS and Digital Broadband, and that the FCC find that VZ-MA has satisfied the requirements of checklist item 5.

III. PERFORMANCE ASSURANCE PLAN

A. Discussion

Several commenters criticized the Department's PAP (or "Plan"), a summary of which

³²⁰ ALTS Comments, Landers Decl. at ¶ 11.

was appended to our Evaluation.³²¹ The Attorney General argues that a higher PAP cap is necessary in order to prevent backsliding and recommends adopting a \$ 278 million dollar cap, which is 70.5 percent of VZ-MA's 1999 total net return.³²² The Attorney General states that the Department should retain authority over the PAP in order to modify the Plan if necessary to include new metrics, revise current metrics and reallocate unused penalties among the components within the PAP.³²³ The Attorney General also suggests that the Department should require VZ-MA to create a Quality Assurance Program to document and verify its data with an internal mechanism to resolve CLEC disputes before bill credits for a given month are due.³²⁴ Finally, the Attorney General argues that the Department should prevent VZ-MA from passing bill credits, penalties, and loss revenue onto the ratepayers.³²⁵

ALTS and RCN contend that the Department should not leave open the opportunity for VZ-MA to recoup bill credits as exogenous costs under its price cap plan.³²⁶ ALTS states that the PAP is weaker than the New York PAP for the reasons identified by AT&T in its

³²¹ D.T.E. Evaluation, Appdx. A.

³²² Attorney General Comments, Attachment A, at 4.

³²³ Id. at 5.

³²⁴ Id. at 7.

³²⁵ Id. at 8.

³²⁶ ALTS Comments at 54; RCN Comments at 27.

September 2000 motion for clarification and reconsideration.³²⁷ RCN recommends that a senior official at VZ-MA be personally and administratively responsible for the execution of

³²⁷ ALTS Comments at 56. On September 25 and September 28, 2000, Rhythms and AT&T, respectively, both filed motions for reconsideration in D.T.E. 99-271, requesting that the Department make several changes or additions to the Massachusetts PAP, which was adopted on September 21, 2000. VZ-MA Application, Appdx. B, Vol. 1, Tab 35 (VZ-MA PAP). In its motion, AT&T requested that the Department further conform the Massachusetts PAP to the New York PAP by: adding an express provision for Department authority to reallocate bill credits among and between the PAP and Change Control Assurance Plan ("CCAP"); offering a refund instead of bill credits to CLECs discontinuing service from VZ-MA; eliminating language that was different from the New York PAP concerning statistical scoring of metrics with no volume; including the same language that appears in the New York PAP for the scoring of measurements with a sample size of less than ten; conforming the Domain Clustering rule with the rule in place in the New York PAP; adding references to make the CCAP Massachusetts-specific and thus making it explicit that the Department has enforcement authority; and adding a statement that data reliability issues would be reviewed in subsequent audits and not just the first audit. AT&T also requested that the Department reconsider the PAP's elimination of the EDI Special Provisions measures that are part of the New York PAP; narrowing the PAP's Waiver Provision; and offering remedies under the PAP as an alternative, as opposed to a supplement, to the remedies under the Consolidated Arbitrations. See Appdx. C, at 7-28 (AT&T Motion for Clarification and Reconsideration). In its motion, Rhythms requested that the Department add additional xDSL-related metrics and an xDSL Mode of Entry. See Rhythms Comments, Exh. 2, at 9-16, 18-20 (Rhythms Motion for Reconsideration).

On October 17, 2000 the Department issued a request for comments on the motions, with initial comments due October 27, 2000, and reply comments due November 3, 2000. The Department received initial comments from VZ-MA, AT&T, and RCN. With its initial comments, VZ-MA included a revised version of its Massachusetts PAP, which it contends addresses many of the concerns AT&T raised in its motion for reconsideration. See Appdx. D (VZ-MA Proposed Revised PAP).

the PAP.³²⁸ Moreover, ALTS notes that the PAP lacks comprehensive xDSL performance measures and fails to address numbering resources.³²⁹

Covad and Rhythms argue that the PAP fails to monitor adequately VZ-MA's xDSL performance and recommend that xDSL be made a separate Mode of Entry under the Plan.³³⁰ Covad states that the Department should increase the penalties under xDSL metrics so that they are equal to the penalties of voice metrics.³³¹ In addition, Rhythms and WorldCom argue that the PAP lacks line sharing metrics.³³²

WorldCom asserts that while an Achieved Flow Through metric is in place under the PAP, VZ-MA has not reported any performance results under this measure and that the Department should ensure VZ-MA can do so.³³³ WorldCom expresses concern that the PAP eliminated the EDI Measures found in the Special Provisions component of the New York PAP.³³⁴ Moreover, WorldCom disagrees that remedies under the PAP should be an alternative

³²⁸ RCN Comments at 28.

³²⁹ ALTS Comments at 60.

³³⁰ Covad Comments at 47-48; Rhythms Comments at 39.

³³¹ Covad Comments at 48.

³³² Rhythms Comments at 39; WorldCom Comments at 57-59.

³³³ WorldCom Comments at 52.

³³⁴ Id. at 53-54

(as opposed to a supplement) to the remedies under the Consolidated Arbitrations.³³⁵

WorldCom states that the PAP's waiver process is inadequate because it will delay the payment of bill credits.³³⁶ Finally, WorldCom argues that the PAP does not adequately monitor xDSL measures.³³⁷

The DOJ also raised concerns about the differences between the Massachusetts PAP and the New York PAP, which it argues may compromise the effectiveness of the Massachusetts PAP. These include: (1) the lack of explicit authority by the Department to reallocate bill credits among and between the PAP and the CCAP; (2) the elimination of scoring measurements with a sample size less than ten; (3) no requirement for VZ-MA to issue refunds instead of bill credits where a CLEC no longer operates in Massachusetts; (4) a change in the domain clustering rule; (5) the lack of a Massachusetts-specific CCAP that gives the Department clear enforcement authority; and (6) the lack of EDI Special Measures.³³⁸

B. Conclusions

In our Evaluation, the Department noted that the Massachusetts PAP is a reasonable

³³⁵ Id. at 55.

³³⁶ Id. at 56.

³³⁷ Id. at 57-59.

³³⁸ DOJ Evaluation at 23 nn.76, 77. The DOJ raised this latter item as a concern because in June and July 2000, VZ-MA experienced difficulties returning BCNs in a timely manner.

and effective means to deter backsliding. The modifications that VZ-MA recently proposed would, if adopted, eliminate most differences between the Massachusetts PAP and the New York PAP (which were addressed in AT&T's motion for reconsideration) and would further strengthen the PAP. These modifications address most of the concerns of the commenters, including the DOJ, about variations between the Massachusetts PAP and the New York PAP, which commenters had alleged made the Massachusetts PAP less effective than the New York PAP. Specifically, VZ-MA has proposed to:

- add a provision for Department authority to reallocate bill credits among and between the PAP and the CCAP;
- include the same language that appears in the New York PAP that VZ-MA will issue checks in lieu of outstanding bill credits to CLECs that discontinue taking service from VZ-MA;
- eliminate language that was different from the New York PAP concerning statistical scoring of metrics with no volume;
- include the same language that appears in the New York PAP for the scoring of measurements with a sample size of less than ten;
- conform the Domain Clustering rule with the rule in place in the New York PAP;
- add references to make the CCAP Massachusetts-specific and thus make it explicit that the Department has enforcement authority; and
- add a statement that data reliability issues would be reviewed in subsequent audits and not just the first audit.³³⁹

With respect to other issues such as the elimination of the EDI Special Provisions (a

³³⁹ Appendix D (VZ-MA Proposed Revised PAP).

concern also raised by the DOJ),³⁴⁰ the Waiver Provision, the Remedy Provision, and the various xDSL issues raised by Rhythms and the other commenters, the Department recognizes the significance of these issues and will give them serious consideration when reviewing and ruling on the motions for reconsideration of AT&T and Rhythms in D.T.E. 99-271.³⁴¹ However, notwithstanding our on-going review of these motions, we emphasize that the existing PAP in its present form is reasonable and effective to deter backsliding, and we urge the FCC to so find.

The question is not whether the PAP could be tougher. Anything can be made tougher. The real question is whether it is, as written, tough enough to prevent and, if need be, compensate for backsliding. We believe it is tough enough.

Because, as noted above, we believe VZ-MA's proposed modification to its Massachusetts PAP address most of the concerns of the commenters, there is no need for us to address such comments individually. We will, however, respond to the few remaining comments not addressed by VZ-MA's modifications or in our Evaluation. Concerning the comments against VZ-MA being allowed to recoup bill credits as exogenous costs under its Massachusetts price cap plan, the Department has an established, adjudicatory process for addressing requests for exogenous cost recovery under Massachusetts law, and it would be

³⁴⁰ DOJ Evaluation at 8-9 n.30, 23 n.77.

³⁴¹ The Department will formally consider these requested modifications after receiving reply comments on the motions for reconsideration, due November 3, 2000.

premature and inappropriate for the Department to consider this issue now. The question arises under Massachusetts law, and so is of doubtful relevance for resolution under § 271.

Lastly, WorldCom claims that the FCC must ensure that VZ-MA report on the Achieved Flow Through metric under the Special Provisions component of the Plan.³⁴² The Massachusetts PAP, like the New York PAP, currently contains the metric for Achieved Flow Through.³⁴³ Therefore, VZ-MA will be required to report on the Achieved Flow Through metric pursuant to the PAP. In the event VZ-MA does not begin reporting on this ordered metric (the concern raised by WorldCom), VZ-MA will pay the appropriate penalty under the PAP.³⁴⁴

IV. PUBLIC INTEREST ANALYSIS

A. Discussion

Commenters raised several public interest arguments opposing approval of VZ-MA's application. Sprint and ALTS contend that VZ-MA's application is inconsistent with the public interest because CLECs cannot obtain adequate numbering resources at this time.³⁴⁵ Sprint argues that the shortage of telephone numbers precludes a CLEC from competing

³⁴² WorldCom Comments at 52.

³⁴³ VZ-MA Application, Appdx. B, Vol. 1, Tab 35, at Appdx. H (VZ-MA PAP).

³⁴⁴ Id.

³⁴⁵ Sprint Comments at 5; ALTS Comments at 52.

against VZ-MA for services requiring new numbers, and that VZ-MA is not affected by the numbering crisis since it has a plentiful supply of numbers.³⁴⁶

Sprint also commented on its interconnection agreement negotiations with VZ-MA. Sprint argued that VZ-MA has taken unreasonable positions during negotiations that have forced Sprint to petition the Department for arbitration, and that forcing Sprint to seek arbitration on issues in which VZ-MA's obligations are unambiguous has delayed and raised the costs of Sprint's effort to enter the Massachusetts local market.³⁴⁷ Sprint maintains that VZ-MA's disregard for its federal and state regulatory obligations is relevant to the FCC's assessment of whether VZ-MA is providing interconnection in compliance with its checklist obligations, whether VZ-MA can be expected to continue to fulfill these obligations, and thus whether competition can be expected to continue and grow if § 271 authority is granted.³⁴⁸

AT&T, AT&T Broadband, and WorldCom comment on the cable telephony market and the status of local residential competition in Massachusetts in their opposition to VZ-MA's application. AT&T, AT&T Broadband, and WorldCom challenge VZ-MA's characterization of cable providers' current telephony capabilities, and argue that VZ-MA's witness overstated AT&T's cable coverage in Massachusetts as well as AT&T's ability to serve Massachusetts

³⁴⁶ Sprint Comments at 5-6.

³⁴⁷ Id. at 18-19.

³⁴⁸ Id. at 19.

customers with a cable telephony offering today.³⁴⁹ To challenge the statements made by VZ-MA, AT&T and AT&T Broadband provide facts and figures of their own, including the number of cable customers served, market share of cable providers, the extent of AT&T Broadband's cable telephony footprint, and the status of the Merger Agreement between AT&T Broadband and Cablevision.³⁵⁰ In addition, AT&T, AT&T Broadband, and WorldCom noted that upgrading cable networks to provide telephony services is a time and labor intensive process.³⁵¹ Accordingly, AT&T and AT&T Broadband argue that CLECs do not have a meaningful opportunity to compete, and that the majority of Massachusetts consumers have no significant competitive options available to them.³⁵²

WorldCom also maintains that VZ-MA faces de minimis local residential competition in many parts of Massachusetts.³⁵³ WorldCom argues that CLEC residential customers amount to less than three percent of the three million residential lines served by VZ-MA at the end of

³⁴⁹ AT&T Comments at 9; AT&T Broadband Comments, Kowolenko Decl. at ¶ 2; WorldCom Comments at 70.

³⁵⁰ AT&T Comments at 9-11; AT&T Broadband Comments, Kowolenko Decl. at ¶¶ 4-6.

³⁵¹ AT&T Comments at 11; AT&T Broadband Comments, Kowolenko Decl. at ¶ 5; WorldCom Comments at 70-71.

³⁵² AT&T Comments at 2; AT&T Broadband Comments, Kowolenko Decl. at ¶ 9.

³⁵³ WorldCom Comments at 67.

1999.³⁵⁴ WorldCom attributes the lack of residential competition in Massachusetts to UNE pricing, and argues that cable telephony and resold services do not provide broad-scale competition within the Massachusetts' residential market.³⁵⁵ Finally, WorldCom argues that granting VZ-MA's application will not force CLECs into competing in the local residential market in Massachusetts to protect their long-distance base.³⁵⁶

B. Conclusions

The Act vests the public interest judgement solely in the FCC, not the Department. The Department's role under § 271 of the Act is to evaluate VZ-MA's compliance with the 14-point checklist. Accordingly, we did not develop an extensive record on the public interest aspect of VZ-MA's application. In our evaluation, the Department expressed the opinion that approval of VZ-MA's application was consistent with the public interest.³⁵⁷ The comments filed in opposition to VZ-MA's application do not persuade us otherwise.

We are not in a position to respond to most of the arguments mentioned above. We would, however, comment at length only on Sprint's numbering resources complaint. While Sprint is correct that there is a shortage of available exchange codes in Eastern Massachusetts,

³⁵⁴ Id.

³⁵⁵ Id. at 69-72.

³⁵⁶ Id. at 72-73.

³⁵⁷ D.T.E. Evaluation at 409-413.

this shortage is only temporary. In April 2001, four new overlay area codes will be fully implemented in the four existing area codes, creating a plentiful supply of numbers. At the same time, the Department is pursuing additional authority from the FCC to implement thousand-block number pooling in the new overlay area codes so that numbering resources are not prematurely exhausted. The Department is also taking preventative steps to ensure that Area Code 413 number resources remain plentiful in the western part of the state, by investigating relief measures, should relief prove necessary, and by seeking comprehensive code conservation authority from the FCC for that area. Moreover, as Sprint notes, carriers are able to file emergency requests for exchange codes outside of the rationing process where lack of numbers would prevent them from serving customers. Importantly, Sprint has yet to make such a request, despite its claims that the lack of numbering resources has delayed its business plans.

APPENDICES

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APPENDIX A